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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

CV2004-016696

THE STATE OF ARIZONA *ex rel.* TERRY
GODDARD, the Attorney General; and THE
CIVIL RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

Plaintiff,

vs.

SABAN RENT-A-CAR, L.L.C., an Arizona
limited liability corporation; and A-AAABLE
Rental LTD., an Arizona corporation,

Defendants.

No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

(Non-classified Civil)

Plaintiff, the State of Arizona *ex rel.* Terry Goddard, the Attorney General; and the Civil Rights Division of the Arizona Department of Law, by and through its attorney undersigned, alleges and states as follows:

INTRODUCTION

This is an action brought by the State of Arizona, *ex rel.* Terry Goddard, under provisions of the Arizonans with Disabilities Act, A.R.S. § 41-1492, *et seq.*, to correct

1 unlawful public accommodations discrimination based on disability, to provide appropriate
2 relief to aggrieved persons, and to vindicate the public interest.

3 JURISDICTION AND VENUE

4 1. The Civil Rights Division of the Arizona Department of Law ("the Division") is
5 an administrative agency established by A.R.S. § 41-1401 to enforce the provisions of the
6 Arizona Civil Rights Act, A.R.S. § 41-1401, *et seq.*

7 2. The State brings this action on its own behalf and on behalf Daniel A. Busch, Jr.,
8 an aggrieved person.

9 3. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1492.09.

10 4. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

11 PARTIES

12 5. Defendant Saban Rent-A-Car, L.L.C. ("Saban's") is a domestic limited liability
13 corporation authorized to do business and doing business within the state of Arizona. Saban's
14 is located and operating a place of business at 3625 W. Indian School Road, Phoenix, Maricopa
15 County, Arizona 85019. Saban's owns and operates a place of public accommodation within
16 the meaning of A.R.S. § 41-1492(9). At all relevant times, Dennis N. Saban was a Member of
17 Saban Rent-A-Car, L.L.C.

18 6. Defendant A-AAble Rental Ltd., ("A-AAble") is a domestic corporation
19 authorized to do business and doing business within the state of Arizona. A-AAble is located
20 and operating a place of business at 3625 W. Indian School Road, Phoenix, Maricopa County,
21 Arizona 85019. A-AAble owns and operates a place of public accommodation within the
22 meaning of A.R.S. § 41-1492(9). At all relevant times, Dennis N. Saban was the
23 President/CEO of A-AAble Rental Ltd..

24 7. Plaintiff is informed and believes and therefore alleges that Defendants are
25 legally responsible for the acts or omissions giving rise to this cause of action and legally and
26 proximately responsible for damages as alleged pursuant to A.R.S. § 41-1492.02(A).

1 8. Daniel A. Busch, Jr., ("Busch") is hearing impaired and is a person with a
2 physical disability within the meaning of A.R.S. § 41-1492(5).

3 STATEMENT OF FACTS

4 9. On or about May 17, 2001, Busch telephoned Saban's/A-AAABLE to obtain
5 information about renting a vehicle. Because of his disability, Busch used Arizona Relay
6 Service to place the call. Arizona Relay Service is a telephone communication service provided
7 by the State that is an accessible, reliable and convenient way for people who are deaf, hard of
8 hearing, or speech disabled to communicate to others by telephone.

9 10. On Busch's first attempt to obtain information from Saban's/A-AAABLE, the
10 operator for Arizona Relay Service asked the employee who answered the telephone if
11 Defendants had ever received a "relay call" before. The individual answering responded "No
12 ma'am but thank you" and hung up.

13 11. Busch made a second attempt a couple of minutes later. In response to that call,
14 the Saban's/A-AAABLE employee who answered the telephone told the operator for Arizona
15 Relay Service, "I can't help you ma'am" and hung up again.

16 12. On Busch's third try, the operator for Arizona Relay Service asked to speak to a
17 supervisor. The response to this request was: "Hello, no, this is the supervisor and we don't
18 take calls from deaf people; can't handle that right now good-bye, thank you." The supervisor
19 then hung up.

20 13. On the fourth try, the operator for Arizona Relay Service asked about the rental
21 cost for a one day rental. The male employee responding said \$24.95 and \$250.00 down. The
22 operator then asked the cost for a three-day rental and the person answering the telephone said
23 "They would have to come in and pick out the type of car they want before we could give them
24 a total. There is [sic] no quotes on the telephone and you will have to come in and talk to
25 someone." In the background, the operator heard someone say. "Let me answer that fucking
26

1 call person.” When the operator attempted to indicate that the caller would come down, the
2 voice at the business said, “Okay and who did you say you were going to report me to? I just
3 don’t give a shit and I will hang up on the caller now. This is old now.”

4 14. Busch and his sister, Sylvia Busch, who served as his interpreter, subsequently
5 visited Saban’s/A-AAble. At the time they were there, it was an hour before closing time and
6 there were no other customers. During that visit they inquired about the rental of a medium
7 sized vehicle. The sales representative first quoted them a price of \$281.00, but when Sylvia
8 Busch asked another question, the representative said that if they asked any more questions he
9 would raise the rate to \$350.00. Busch and Sylvia Busch continued to discuss the rental terms
10 for another 10 to 15 minutes and the sales representative told them the cost would then be
11 \$350.00. At no time during the meeting did Defendants or their representatives show Busch or
12 Sylvia Busch any vehicles.

13 15. Following that discussion, Busch and Sylvia Busch left the lot and returned home
14 where they described the situation to their mother, Linda Sandoval (“Sandoval”). Sandoval
15 promptly called Defendants and asked if they could give her a rental quote over the telephone.
16 Defendant’s representative said yes and quoted her a rental fee for a medium sized car for
17 weekend rental.

18 16. Upon information and belief, Defendants’ management knows about the various
19 ways in which its sales representatives deal with customers, in particular, those who are deaf,
20 hard of hearing, or hearing impaired.

21 17. Upon information and belief, Defendants currently have no procedures in place
22 for modifying its policies, procedures or practices or for accommodating customers with
23 disabilities, including customers who are deaf, hard of hearing or hearing impaired.

24 18. Upon information and belief, Defendants utilize standards or criteria or methods
25 of administration, directly and through its contractual or other arrangements that have the effect
26 of discriminating on the basis of disability.

19. Defendants have failed to take the necessary steps to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

20. Defendants have subjected Busch to different terms and conditions of service and denied an individual the opportunity to participate in or benefit from Defendants' goods, services, facilities, advantages, privileges or accommodations on the basis of the disability of that individual, directly or through contractual, licensing or other arrangements.

CAUSE OF ACTION

COUNT ONE

(Discrimination in Violation of the Arizonans with Disabilities Act)

21. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

22. Busch is hearing impaired and is a person with a physical disability with in the meaning of A.R.S. § 41-1492(5) and an “aggrieved person” for purposes of A.R.S. § 41-1492.09(B).

23. On or about June 11, 2001, Busch filed a timely administrative complaint of public accommodations discrimination with the Division alleging that Defendants discriminated against him and persons with disabilities by failing to provide full and equal services and by failing to make reasonable modifications in its policies, practices or procedures necessary to afford persons with disabilities full and equal enjoyment of its services.

24. The Division investigated Busch's administrative complaint of public accommodation discrimination pursuant to A.R.S. § 41-1492.09.

25. On or about July 28, 2004, pursuant to A.R.S. § 41-1492.09, the Division issued a finding of reasonable cause to believe that discrimination has occurred.

26. Since the issuance of the reasonable cause finding by the Division, the parties to the above-referenced administrative complaint have not entered into a Conciliation Agreement.

1 27. The Arizonaans with Disabilities Act, A.R.S. § 41-1492.02 states that no individual
2 may be discriminated against on the basis of disability in the full and equal enjoyment of the
3 goods, services, facilities, privileges, advantages or accommodations of any place of public
4 accommodations by any person who owns, leases or operates a place of public accommodation
5 or a commercial facility.

6 28. Defendants unlawfully discriminate and unlawfully discriminated against an
7 individual with a disability as follows:

- 8 (a) by denying an individual with a disability the full and equal enjoyment of
9 goods, services, facilities, privileges, advantages or accommodations being
10 offered, in violation of A.R.S. § 41-1492.02(A);
- 11 (b) by failing to make reasonable modifications in its policies, practices or
12 procedures necessary to afford persons with disabilities full and equal
13 enjoyment of its goods, services, facilities, privileges, advantages or
14 accommodations, in violation of A.R.S. § 41-1492.02 (F)(2);
- 15 (c) by utilizing standards or criteria or methods of administration that
16 have the effect of discriminating on the basis of disability, in violation of
17 A.R.S. § 41-1492.02 (E); and
- 18 (d) by failing to take such necessary steps to ensure that no individual with a
19 disability is excluded, denied services, segregated or otherwise treated
20 differently than other individuals because of the absence of auxiliary aids
21 and services, in violation of A.R.S. § 41-1492.02 (F)(3).

22 29. As a result of Defendants' discrimination against Busch based on his disability,
23 Busch has suffered actual and monetary damages, including damages for mental anguish,
24 emotional distress, humiliation, embarrassment, inconvenience and loss of his rights under the
25 Arizonaans with Disabilities Act, to which he is entitled to recover and for which he should be
26 compensated pursuant to A.R.S. § 41-1492.09(B).

1 30. As a result of Defendants' actions, an individual with a disability has been denied
2 the right to full and equal enjoyment of services offered by a place of public accommodation.
3 This right is protected by the Arizonans with Disabilities Act, A.R.S. § 41-1492 *et seq.* The
4 denial of this right raises an issue of general public importance and, therefore, Plaintiff brings
5 this action to vindicate the public interest.

6 31. Defendants could have reasonably anticipated the need to accommodate the
7 unique needs of individuals with disabilities and has failed to make any good faith efforts or
8 attempts to comply with state and federal anti-discrimination laws and are therefore subject to
9 injunctive relief under A.R.S. § 41-1492.09(B).

10 32. Defendants did not make a good faith effort or attempt to comply with the
11 Arizonans with Disabilities Act.

12 33. Defendants could have reasonably anticipated the need for an appropriate type of
13 auxiliary aid or service needed to accommodate the unique needs of a particular individual with
14 a disability.

15 34. Defendants are subject to a statutory civil penalty in an amount of not more than
16 five thousand dollars (\$5,000.00) for a first violation and ten thousand dollars (\$10,000.00) for
17 any subsequent violation under A.R.S. § 41-1492.09(C).

18 WHEREFORE, Plaintiff requests that this Court:

19 A. Enter a judgment on behalf of Plaintiff, finding that Defendants unlawfully
20 discriminated against Busch based on his disability, in violation of the Arizonans with
21 Disabilities Act.

22 B. Grant a permanent injunction prohibiting Defendants from continuing to
23 discriminate on the basis of disability against any person in violation of the Arizonans with
24 Disabilities Act, A.R.S. § 41-1492.02.

25 C. Order that Defendants provide full and equal enjoyment of goods, services,
26 facilities, privileges, advantages or accommodations to persons with disabilities; make

1 reasonable modifications in its policies, practices or procedures necessary to afford persons
2 with disabilities full and equal enjoyment of its goods, services, facilities, privileges, advantages
3 or accommodations.

4 D. Order that Defendants provide training to all staff regarding state and federal laws
5 requiring modifications in the provision of goods, services, facilities, privileges, advantages or
6 accommodations to persons with disabilities.

7 E. Order that Defendants pay the State of Arizona a statutory civil penalty to
8 vindicate the public interest in an amount that does not exceed five thousand dollars (\$5,000.00)
9 for the first violation and ten thousand dollars (\$10,000.00) for the second or subsequent
10 violation, pursuant to A.R.S. § 41-1492.09(C) and (E).

11 F. Order the State to monitor Defendants' compliance with the Arizonans with
12 Disabilities Act.

13 G. Grant judgment and award monetary damages incurred by Busch as a result of
14 Defendants' discriminatory conduct under A.R.S. § 41-1492.09(B) in an amount to be
15 determined at trial, including prejudgment interest.

16 H. Grant judgment and award payment to the Attorney General for its costs incurred
17 in bringing this action and its costs in monitoring Defendants' future compliance with the
18 Arizonans with Disabilities Act, pursuant to A.R.S. §§ 12-332 and 12-341.

19 I. Grant such other and further relief as this Court may deem just and proper.

20 Dated this 27th day of August 2004.

21 TERRY GODDARD
22 Attorney General

23 By

Robbin M. Coulon
24 Robbin M. Coulon

25 Assistant Attorney General

26 rmc/busch/262072v1